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(i) The transfer or combination would preclude the overall annual quota from being fully harvested;

(ii) The transfer addresses an unforeseen variation or contingency in the fishery; and

(iii) The transfer is consistent with the objectives of the Bluefish FMP and Magnuson-Stevens Act.

(2) The transfer of quota or the combination of quotas will be valid only for the calendar year for which the request was made.

(3) A state may not submit a request to transfer quota or combine quotas if a request to which it is party is pending before the Regional Administrator. A state may submit a new request when it receives notification that the Regional Administrator has disapproved the previous request or when notification of the approval of the transfer or combination has been published in the FEDERAL REGISTER.

(f) Based upon any changes in the landings data available from the states for the base years 1981–89, the ASMFC and the MAFMC may recommend to the Regional Administrator that the states' shares specified in paragraph (d)(1) of this section be revised. The MAFMC's and the ASMFC's recommendation must include supporting documentation, as appropriate, concerning the environmental and economic impacts of the recommendation. The Regional Administrator shall review the recommendation of the ASMFC and the MAFMC. After such review, NMFS will publish a proposed rule in the FEDERAL REGISTER to implement a revision in the state shares. After considering public comment, NMFS will publish a final rule in the FEDERAL REGISTER to implement the changes in allocation.

(g) *Research quota.* See § 648.21(g).

§ 648.163 Gear restrictions.

If the Council determines through its annual review or framework adjustment process that gear restrictions are necessary to assure that the fishing mortality rate is not exceeded, or to attain other FMP objectives, such measures will be enacted through the procedure specified in §§ 648.160(d) or 648.165.

EFFECTIVE DATE NOTE: At 76 FR 60640, Sept. 29, 2011, § 648.163 was revised, effective October 31, 2011. For the convenience of the user, the revised text is set forth as follows:

§ 648.163 Bluefish Accountability Measures (AMs).

(a) *ACL overage evaluation.* The ACL will be evaluated based on a single-year examination of total catch (landings and dead discards). Both landings and dead discards will be evaluated in determining if the ACL has been exceeded.

(b) *Commercial sector EEZ closure.* NMFS shall close the EEZ to fishing for bluefish by commercial vessels for the remainder of the calendar year by publishing notification in the FEDERAL REGISTER if the Regional Administrator determines that the inaction of one or more states will cause the ACL specified in § 648.160(a) to be exceeded, or if the commercial fisheries in all states have been closed. NMFS may reopen the EEZ if earlier inaction by a state has been remedied by that state, or if commercial fisheries in one or more states have been reopened without causing the ACL to be exceeded.

(c) *State commercial landing quotas.* The Regional Administrator will monitor state commercial quotas based on dealer reports and other available information and shall determine the date when a state commercial quota will be harvested. NMFS shall publish notification in the FEDERAL REGISTER advising a state that, effective upon a specific date, its commercial quota has been harvested and notifying vessel and dealer permit holders that no commercial quota is available for landing bluefish in that state.

(1) *Commercial landings overage repayment.* All bluefish landed for sale in a state shall be applied against that state's annual commercial quota, regardless of where the bluefish were harvested. Any overages of the commercial quota landed in any state will be deducted from that state's annual quota for the following year, irrespective of whether the fishery-level ACL is exceeded. If a state has increased or reduced quota through the transfer process described in § 648.162, then any overage will be measured against that state's final adjusted quota.

(2) If there is a quota overage at the end of the fishing year among states involved in the combination of quotas, the overage will be deducted from the following year's quota for each of the states involved in the combined quota, irrespective of whether the fishery-level ACL is exceeded. The deduction will be proportional, based on each state's relative share of the combined quota for the previous year. A transfer of quota or combination of quotas does not alter any state's percentage share of the overall quota specified in § 648.162(d)(1).

(d) *Recreational landings AM when the ACL is exceeded and no sector-to-sector transfer of allowable landings has occurred.* If the fishery-level ACL is exceeded and landings from the recreational fishery are determined to be the sole cause of the overage, and no transfer between the commercial and recreational sector was made for the fishing year, as outlined in § 648.162(b)(2), then the exact amount, in pounds, by which the ACL was exceeded will be deducted, as soon as possible, from a subsequent single fishing year recreational ACT.

(e) *AM for when the ACL is exceeded and a sector-to-sector transfer of allowable landings*

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has occurred. If the fishery-level ACL is exceeded and landings from the recreational fishery and/or the commercial fishery are determined to have caused the overage, and a transfer between the commercial and recreational sector has occurred for the fishing year, as outlined in § 648.162(b)(2), then the amount transferred between the recreational and commercial sectors may be reduced by the ACL overage amount (pound-for-pound repayment) in a subsequent, single fishing year if the Bluefish Monitoring Committee determines that the ACL overage was the result of too liberal a landings transfer between the two sectors.

(f) *Non-landing AMs.* In the event that the ACL has been exceeded and the overage has not been accommodated through the AM measures in paragraphs (a) through (d) of this section, then the exact amount, in pounds, by which the ACL was exceeded shall be deducted, as soon as possible, from a subsequent, single fishing year ACL.

(g) *State/Federal disconnect AM.* If the total catch, allowable landings, commercial quotas, and/or recreational harvest limit measures adopted by the ASMFC Bluefish Management Board and the MAFMC differ for a given fishing year, administrative action will be taken as soon as is practicable to revisit the respective recommendations of the two groups. The intent of this action shall be to achieve alignment through consistent state and Federal measures so no differential effects occur to Federal permit holders.

§ 648.164 Possession restrictions.

(a) No person shall possess more than 15 bluefish in, or harvested from, the EEZ unless that person is the owner or operator of a fishing vessel issued a bluefish commercial permit or is issued a bluefish dealer permit. Persons aboard a vessel that is not issued a bluefish commercial permit are subject to this possession limit. The owner, operator, and crew of a charter or party boat issued a bluefish commercial permit are not subject to the possession limit when not carrying passengers for hire and when the crew size does not exceed five for a party boat and three for a charter boat.

(b) Bluefish harvested by vessels subject to the possession limit with more than one person on board may be pooled in one or more containers. Compliance with the daily possession limit will be determined by dividing the number of bluefish on board by the number of persons on board, other than the captain and the crew. If there is a

violation of the possession limit on board a vessel carrying more than one person, the violation shall be deemed to have been committed by the owner and operator.

[65 FR 45852, July 26, 2000, as amended at 66 FR 23627, May 9, 2001]

EFFECTIVE DATE NOTE: At 76 FR 60641, Sept. 29, 2011, § 648.164 was revised, effective October 31, 2011. For the convenience of the user, the revised text is set forth as follows:

§ 648.164 Bluefish possession restrictions.

(a) No person shall possess more than 15 bluefish in, or harvested from, the EEZ unless that person is the owner or operator of a fishing vessel issued a bluefish commercial permit or is issued a bluefish dealer permit. Persons aboard a vessel that is not issued a bluefish commercial permit are subject to this possession limit. The owner, operator, and crew of a charter or party boat issued a bluefish commercial permit are not subject to the possession limit when not carrying passengers for hire and when the crew size does not exceed five for a party boat and three for a charter boat.

(b) Bluefish harvested by vessels subject to the possession limit with more than one person on board may be pooled in one or more containers. Compliance with the daily possession limit will be determined by dividing the number of bluefish on board by the number of persons on board, other than the captain and the crew. If there is a violation of the possession limit on board a vessel carrying more than one person, the violation shall be deemed to have been committed by the owner and operator of the vessel.

§ 648.165 Framework specifications.

(a) *Within season management action.* The Council may, at any time, initiate action to add or adjust management measures if it finds that action is necessary to meet or be consistent with the goals and objectives of the Bluefish FMP.

(1) *Adjustment process.* After a management action has been initiated, the Council shall develop and analyze appropriate management actions over the span of at least two Council meetings. The Council shall provide the public with advance notice of the availability of both the proposals and the analysis and the opportunity to comment on them prior to and at the second Council meeting. The Council's recommendation on adjustments or additions to management measures must come from one or more of the following